

Don't be blinded by procedural justice, but compensate those who should be

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It is widely accepted that, over the course of the next few decades, a significant energy transition is necessary. However, this energy transition can have adverse consequences at the local level. These local consequences evoke resistance from local residents, which in turn often impedes the progress of and support for the energy transition. Resistance cannot be dispelled simply by more closely involving residents in the decision-making process. What is needed is actual, fair compensation.

In order to cope with the climate crisis as a society, thorough changes will have to take place in the energy infrastructure in the coming decades. These changes may also have adverse local consequences. Consider, for example, noise- and horizon pollution in the vicinity of wind farms. Or consider the heightened risk of earthquakes in Groningen if more gas were to be extracted as a transitional fuel. If locations on land were to be designated for the subterranean storage of carbon dioxide this could also come with a specific set of risks (although, as of yet, this is not the case in the Netherlands). Lastly, some citizens are still afraid of accidents at nuclear power plants, which means a loss of prosperity.

From a collective perspective, specifically from the perspective of Dutch society as a whole, these adverse local consequences are often unproblematic. After all, the benefits of the avoided climate damage are much greater than the costs of the energy transition, even if one takes into account social welfare losses that usually have no nominal price, such as noise nuisance and horizon pollution. The same goes for the economic perspective. After all, economists are mainly interested in the efficiency of a situation according to the so-called 'Kaldor-Hicks' criterion. This criterion assumes that a policy choice is sensible when those who benefit from it are theoretically able to compensate those who are negatively affected. However, this compensation does not actually have to take place.

Procedural justice



THE JUST ENERGY ESSAYS

The question is whether such a collective economic perspective on the energy transition is a fair perspective. In recent decades, much attention has been paid specifically to the procedural aspect of justice. There are four requirements to procedural justice. The first is consistency: fair procedures ensure that like cases are treated equally and that parties can count on fair, equal treatment. The second is neutrality: actors who carry out the procedures should be impartial and neutral. Thirdly, there's representation: all those affected by decisions should have a say in the decision-making process. And the fourth is transparency: decisions should be taken in open and public procedures without attempts concealment or deception.

Procedural justice mainly ensures that the interests of all groups are represented in the decision-making process. These interests are also weighted equally. Related to procedural justice is the concept of recognition: the recognition that some groups in society have a structural exposure to risks and having passed onto them than other groups and are also less able to cope with them. (1)

The idea behind this increased focus on procedural justice and recognition is as follows: people who feel heard and seen, and believe that the burdens they bear are also taken into account during the decision-making process, will feel like active, included members of society and therefore have a greater understanding of the collective or social importance of the decisions being made.

However, procedural justice and recognition of consequences do not guarantee that the burden for certain groups will actually be reduced. The fact that the national government, for example, listens to victims in Groningen and takes earthquake damage into account when considering gas extraction, does not mean that victims will also be compensated for said damage. First of all, this is problematic in regards to maintaining public support in a society that is becoming increasingly more individualistic. Although there is still a strong degree of solidarity to bear burdens in the collective interest, as evidenced by among other things, the widespread acceptance of the progressive tax system, there are limits to what people are willing to put up with. Especially if citizens experience their own burdens as disproportionate to the burdens borne by others.

Corrective justice

If the costs of the energy transition are divided unequally it can be particularly problematic from a distributive and corrective justice perspective. How burdens, but also benefits, can be

distributed equitably is the question in particular with regard to generic policies that affect all citizens, such as the introduction of energy taxes. Opinions about what distributive justice means in this case may differ. These opinions can range from the polluter pays principle to the solidarity principle. Under the first principle, everyone is personally responsible for bearing the costs of reducing their own emissions. The principle of solidarity, on the other hand, means that the strongest shoulders bear the heaviest burden. (2) the protests of 'les gilets jaunes', known in the Netherlands as the 'yellow vests', in France in 2018 in response to the increase in fuel excise duties show what is happening if insufficient account is taken of the way in which the burden of policy is distributed across society.

However, there are also burdens of the energy transition that affect specific citizens more, not because they use more energy, but because the government makes spatial planning choices, such as when granting permits for a wind farm or nuclear power plant. In that case, compensation of local residents is not so much a question of distributive justice, but rather of corrective justice. When one party unlawfully harms another party, corrective justice calls for compensation. The crux here lies in the word 'unlawful'. Because although the loser of a tennis match also suffers damage, the winner does not have to pay compensation; after all, the loser was not entitled to profit.

In the case of noise pollution or earthquake risks, there is indeed unlawful damage for local residents - at least, if people were already living there before the government made the decisions that led to the aforementioned pollution and risks. If someone later moved to live in this location, then the damage was allegedly 'chosen' and it is not unlawful. Without compensation, the so-called Nimby-effect ('not in my backyard') should therefore not come as a surprise: many local residents do not want the new activities in their backyard, as the municipality of Amsterdam experiences with its plans for wind turbines along the city outskirts. Please note: the term 'unlawful' is used here in a moral sense and not in a legal sense. From the aforementioned perspectives of social importance and economic efficiency, legal standards can be formulated in such a way that pollution and risks do not cause unlawful damage in a legal sense. However, ethics precedes law. This essay therefore addresses the moral question of what the norms should be not merely the lawful questions.

Amount of compensation

How much compensation should be offered if damage was indeed done? Essentially, enough so that residents, municipalities or provinces would voluntarily opt for projects such as a wind farm

or CO₂ storage because the compensation is deemed fair. Ideally, the (central) government can select several locations and/or options. The residents who are satisfied with the lowest compensation 'get' the project. Such a bid can only succeed if there are enough parties to bid for it. If projects can only go ahead if local residents voluntarily agree to the projects (including compensation) – taking into account the necessity of the energy transition – local residents could otherwise demand higher compensation than they actually need to compensate for their troubles.

Compare it to the market: in the case of a monopoly there is insufficient competition and therefore no competitive pricing model. If there are indeed not enough parties, then economists have a range of methods to express non-monetary loss of welfare in numbers. What is important to realize is that the required compensation is usually more than merely the factual financial damage resulting from the costs of, for example, soundproof windows next to wind turbines or the repair costs for earthquake damage in Groningen. After all, it would be worth more to local residents not to experience nuisance or run risks.

Compensating local residents will increase the costs of the energy transition. This can cause resistance among critics of the energy transition. Many critics already believe that too much public money is being spent on it, and are against using general funds to pay for compensation on top of their construction and operational costs. But proponents of the energy transition may also have the idea that the seriousness of the climate crisis makes it inappropriate to ask for compensation for any inconvenience caused.

Genuine welfare loss

Yet, it makes sense to overcome these obstacles and provide compensation for several reasons. Firstly, from the point of view of corrective justice. Just as it is unfair to let victims of climate change bear the costs of damage themselves instead of holding those who cause it accountable, it is unfair to place the costs of the energy transition on those who experience the inconveniences of it. Secondly, from an efficiency point of view. Even though the nuisance experienced by local residents is difficult to express in a specific monetary value due to the lack of a market for the nuisance, it is still a very real loss of welfare. Offering concrete compensation reasonably reflects this loss. If the project becomes too expensive when compensation has to be offered, then it may not have been such a sensible project in the first place and it is therefore better to look for alternative solutions.

Thirdly, because of the need to start the energy transition quickly. At the moment too many

projects fail because residents and/or municipalities oppose projects that are detrimental to them. The (central) government could force the projects from the collective interest, but in our Dutch democracy such a move is bound to be met with (much) resistance. Therefore it is better to increase support for the energy transition by quickly offering the involved parties compensation for the loss of prosperity or welfare suffered. After all, given the seriousness of the climate crisis, the energy transition must take place as quickly as possible.

Notes:

1. See for example: Schlosberg, d. (2013). Theorizing environmental justice: The expanding sphere of a discourse. *Environmental Politics*, 22(1), 375-5. Walker, G., & Day, R. (2012). Fuel poverty as injustice: integrating distribution, recognition and procedure in the struggle for affordable warmth. *Energy policy*, 49, 69-75.

2. For further discussion of distributive justice, read Davidson, M.D. (2021). Verdelende rechtvaardigheid in het klimaatbeleid. Working Paper 49. Wetenschappelijke Raad voor het Regeringsbeleid, Den Haag.



This essay was originally written in Dutch and has been translated by [Kayleigh Herber](#), Cachet Translations.

The Just Energy Essays

This essay is part of the series 'The Just Energy Essays'. From January 2023 until the beginning of March 2023, weekly essays were published on the Dutch energy news website [Energieia](#), each one with a new perspective exploring just energy transitions. The essays have been penned by philosophers, engineers, lawyers, sociologists, political scientists, development researchers, researchers who focus on the influence of gender, and more. This series has been developed in collaboration with the Urban Futures Studio, a subsidiary of Utrecht University. For more information on this series, please contact [dr. Jesse Hoffman](#).

Seminar

In a contribution to a broader perspective and insight into the design of a just energy transition, we have asked various researchers to write an essay on this topic. The essays come from philosophers, engineers, lawyers, sociologists, political scientists, development researchers, researchers who focus on the influence of gender, and more. Over a series of weeks these essays were published on Energieia. On March 7, 2023, a seminar was held on shaping a just energy transition.